



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2017 Biennium

Bill #	SB0130	Title:	Generally revise Montana home guard laws
Primary Sponsor:	Webb, Roger	Status:	As Introduced

- | | | |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
Expenditures:				
General Fund	\$75,300	\$73,486	\$74,588	\$75,707
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>(\$75,300)</u>	<u>(\$73,486)</u>	<u>(\$74,588)</u>	<u>(\$75,707)</u>

Description of fiscal impact: The full fiscal impact of SB 130 cannot be determined at this time as there are too many uncertainties for a quantifiable fiscal impact. The costs given apply to a position that would be needed to ensure compliance to SB 130. Disasters and emergencies that could potentially require the use of the Home Guard at the state or county level are not predictable and therefore not quantifiable. A reasonable estimate of how many companies would apply for certification, or how many volunteers each company might have cannot be made with certainty.

FISCAL ANALYSIS

Assumptions:

- Section 26 (page 9, line 12) would impose a cost to be borne by the Governor's Office to manage the commissioning, rulemaking, and certification responsibilities that are mandated by Section 26. There would be further costs associated with receiving monthly reports and conducting annual inspections, as required by Section 24 (page 8, line 16), and 1.00 FTE would be required to manage and provide the necessary oversight to the Home Guard. A new employee package in SFY 2016 of \$2,900, as well as a 1.5% inflation factor for personal service costs after SFY 2016 is estimated.

2. Section 30 (page 11, line 13) indicates that the Governor can allow the Home Guard use of armories and equipment. The Governor has the authority to allow the use of state owned facilities and equipment, but appropriate costs should be captured. Additionally, if the Governor is responsible for the approval of the Company Charter, it is presumably a responsibility of the state to ensure that realistic missions are assigned, and training accomplished to standards. This likewise would result in a cost. Assuming that the Montana National Guard does provide training, it would have to be in a State Active Duty status, at state expense, because the Montana National Guard is barred from spending federal funds on state activities. There could be additional costs associated for other entities to provide training, such as the cost of instructors and materials to attain “Red Card” fire status (standards of survival training) before an individual can support wildfire operations. Additionally, the cost of lodging and meals for the Home Guard during training would presumably be incurred by the state.
3. An assumption of possible training cost, utilizing National Guard Regulation 5-1, would be \$1,215. In this case, the State of Montana is considered a Category I customer. The regulation allows the federal government to charge for usage of all training facilities and training areas. The costs include a flat usage rate for the type/kind of facility, or area, plus an incremental cost to cover utilities. For a company of roughly 100 soldiers, per Section 30, to qualify with their assigned weapons (M16 rifles for instance) there would be the following costs:

Rifle Zero Firing Range:	\$60.63
Multi-Purpose Automated Range:	\$411.76
Barracks (one night):	\$3.18/Soldier (\$318 total)
Linen Costs:	\$3.85/Soldier (\$385 total)
Dining Facility:	\$40
Total:	\$1,215.39

This is a conservative estimate assuming all Soldiers qualify on their own weapons. The state would pay the cost of using these Montana Guard training facilities but the level and frequency of use of the Montana Guard Training areas cannot be identified.

4. Depending on the frequency, duration and/or permanence of use or occupation of facilities, the State/Federal cost share split may have to be adjusted resulting in the state paying a higher percentage of facility Operation and Maintenance (O&M) costs. This increase would then be needed to be included in DMA’s biennial operating budget request. The calculation of the percentage for the funding split would be based on space occupied and cannot be determined at this point.
5. Section 31 (page 11, line 26) indicates that the Home Guard will be covered by workers’ compensation when activated. Activation may be caused by the call of the Governor, or a county sheriff. When the Guard activates a soldier for State Active Duty, there is a cost DMA must pay to workers’ compensation for their coverage. It would be assumed there would be a similar cost to the state for the Home Guard. As they are volunteers, a wage would be imputed for purposes of premium and benefit calculation. Additionally, this could cause issues with the return to work dates. These factors could increase the cost of workers’ compensation insurance to cover the activities of the Home Guard.
6. Section 32 (page 12, line 6) indemnifies members of the Home Guard from liability in the performance of assigned duties and obligates the attorney general to defend such claims at state expense. This is an issue which would be referred to the Montana Risk Management and Tort Defense Division, since it appears that as written, the State of Montana would have potential liability for the injuries and property damage that are caused by members of a Home Guard.
7. The level and frequency of clean-up cost after activation in Section 30 (page 11, line 13) is dependent on too many uncertainties for an identifiable fiscal impact. A 15-gallon hydraulic oil spill in Miles City that was excavated by unit personnel in 2012 cost \$1,290. The spill required a rushed soil sample analysis of \$225

and the disposal of >21 tons contaminated soil at \$1,065. The state could consider roughly \$1,290 for a similar incident.

8. Section 17 (page 6, line 14) creates the potential for additional claims for loss of unidentifiable personal equipment of Home Guard members which is lost, damaged, or destroyed in active service of the Home Guard when activated. Personal equipment, which is undefined, could potentially include everything from individual clothing to vehicles or heavy equipment owned by members of the Home Guard.
9. Section 29 (page 10, line 25) requires the consent of the legislature to activate a company of the Home Guard for more than 30 days in any calendar year. Legislative approval would come at a cost, in particular if the legislature is not in session at the time the approval is needed.
10. Sections 33, 34, and 35 (page 12, line 10) extend the protections of the Montana Military Service Employment Rights Act (“MMSERA”) to members of the Home Guard, which will presumably add additional costs to the Department of Labor and Industry to assist with and investigate MMSERA claims related to Home Guard members.

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
<u>Fiscal Impact:</u>				
FTE	1.00	1.00	1.00	1.00
<u>Expenditures:</u>				
Personal Services	\$72,400	\$73,486	\$74,588	\$75,707
Operating Expenses	\$2,900	\$0	\$0	\$0
TOTAL Expenditures	\$75,300	\$73,486	\$74,588	\$75,707
<u>Funding of Expenditures:</u>				
General Fund (01)	\$75,300	\$73,486	\$74,588	\$75,707
TOTAL Funding of Exp.	\$75,300	\$73,486	\$74,588	\$75,707
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$75,300)	(\$73,486)	(\$74,588)	(\$75,707)

Effect on County or Other Local Revenues or Expenditures:

1. SB 130 provides for incidental expenses for a company that is activated by a county sheriff. A county may have to pay claims to Home Guard members for personal equipment that is lost, damaged, consumed, or destroyed as part of active duty. A reasonable estimate of how many companies would apply for certification or how many volunteers each company might have cannot be made. Disasters and emergencies that could potentially require the use of the home guard at the county level are not predictable and therefore are not quantifiable.

Technical Notes:

1. Section 31 (page 11, line 26) and Section 27 (page 9, line 25) conflict. Section 27 says service in the Home Guard is at the member’s own risk, but that risk is limited by Section 31, which would provide workers’ compensation coverage for Home Guard members during activation (though not during periods other than activation).

2. 39-71-118, MCA (Definition of Employee under Workers' Compensation Act) does not clearly exempt Home Guard volunteers from the Workers' Compensation Act when they are not in an activated status, similar to the exemptions for volunteer firefighters and emergency medical technicians, or clarify that for workers' compensation purposes the Home Guard members receive no wage whether the Home Guard is activated or not.
3. Section 36 (page 13, line 19) refers to "training for admission into the Home Guard," which appears to create an additional classification of individuals (i.e. trainees) whose legal status is unclear.

Sponsor's Initials

Date

Budget Director's Initials

Date